

APPEAL NO. 060353
FILED APRIL 12, 2006

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 19, 2006. The hearing officer resolved the disputed issue by deciding that the attorney fee award in Sequence No. 02 was not reasonable and necessary and was not earned. Attorney (appellant) appealed, arguing that the hearing officer based her decision on an issue outside the scope of the stated issue for the CCH and that the hearing officer did not have authority to act as a signature expert by striking down the validity of a duly completed power of representation. The attorney additionally argued that the hearing officer removed from the records in evidence a properly admitted evidentiary document and replaced it with a document that was not admitted into evidence. Respondent 1 (claimant) responded, urging affirmance of the hearing officer's determination.

DECISION

Reversed and remanded for reconstruction of the record.

Section 410.203(a)(1) requires the Appeals Panel to consider the record developed at the CCH. See Appeals Panel Decision (APD) 91017, decided September 25, 1991. The hearing officer's decision and order reflects that the CCH on the contested issue of attorney's fees was held by telephone. In her response, the claimant discusses testimony given at the CCH. However, no audio cassette recording, audio compact disc recording, or transcript was included in the appeals record. Consequently, we reverse and remand this case for reconstruction of the record. See APD 960968, decided July 3, 1996.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge